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Supreme Court of the United States.

No. 138.—October Term, 1903.

The Minneapolis and St. Louis Railroad Company, Plaintiff in Error, *vs.* The State of Minnesota ex rel. The Railroad and Warehouse Commission.	In error to the Supreme Court of the State of Minnesota.

[February 23, 1904.]

Mr. Justice McKenna delivered the opinion of the Court.

This is a proceeding in mandamus to compel plaintiff in error to build and maintain a station house on the line of its road at the village of Emmons, in compliance with an order of the Railroad and Warehouse Commission of the State of Minnesota.

The order of the commission was made upon petition and upon hearing after due notice to plaintiff in error. The writ was granted by the District Court of Freeborn County, where the proceedings were commenced.

The railroad company in its answer attacks the statute under which the commission acted as follows:

"This respondent says further, that chapter 270, General Laws 1901, approved April 13, 1901, which was enacted by the legislature of said State at its thirty-second session, which arbitrarily requires railroad carriers to provide freight and passenger rooms and depots at all villages and boroughs upon their respective roads, without regard to the necessity therefor and without regard to the location or situation of such village or boroughs, or to existing conditions, is unjust, unreasonable, contrary to public policy and void.

"It denies to the respondent the right to reasonably manage or control its own business; it takes its property without its consent.

"It takes the property of this respondent arbitrarily and unnecessarily, for public use, without just compensation, and is, therefore, violative of the Fifth Amendment to the Constitution of the United States.

"It deprives the respondent of its property without due process of law, and denies it the equal protection of the laws, and thus violates the Fourteenth Amendment to the Constitution to the United States."

The Supreme Court of the State affirmed the judgment of the District Court, the members of the court equally dividing on the facts.

This is the second attempt of the village of Emmons to secure a depot. The first was unsuccessful, (76 Minn. 469,) "wherein the facts are stated," the Supreme Court observed, and it further observed, passing on the case at bar:

"Mr. Associate Justice Lovely having been of counsel for the village in the former proceeding, was disqualified from sitting at the hearing of this appeal, and the cause was necessarily argued and submitted to the four remaining members of the court. We assume that the Laws 1901, chapter 270, which in express terms requires railway companies to build and maintain depots or station houses in all villages through which their roads may pass, is in itself valid legislation, and not open to the objection that it is not within the legislative power to enact such a law. With this assumption no dispute has arisen over a construction of the act, to the effect that all incorporated villages within this State located on railway lines are *prima facie* entitled to depots. The commissioners have the power to order the erection and maintenance of depot buildings unless it is made to appear that such an order would be so unreasonable in its terms as to actually result in depriving the company proceeded against of its property without due process of law. The change made by the statute of 1901 simply affects or shifts the burden of proof, for prior to its enactment the burden was on the municipality to establish the reasonableness and necessity of a depot therein, while now a railway company appearing before the commissioners, or trying its case on appeal to the District Court, bears the burden of showing that such a requirement is not called for, and that the building and maintenance of a depot in the village is unnecessary and unreasonable.

"But while agreeing as to this interpretation of the law, we fail to reach the same conclusion in respect to the facts. We do not question the correctness of the conclusion reached when considering the former appeal. But two members of the court, Mr. Chief Justice Start and Associate Justice Brown, are of the opinion that, from the evidence, it appears that there has since been a substantial growth in the village, a growth which makes an altogether different showing, and that the company did not overcome the *prima facie* case arising by virtue of the statute, and therefore that the judgment appealed from should be affirmed. Associate Justice Collins and Lewis are unable to agree to this. Their conclusion is that the testimony fails to show that there has been a real or substantial change in the village, its needs or necessities, that the situation is practically as it was when the former proceeding was considered that the *prima facie* case made by the village has been wholly overcome by the defendant company.

"With this difference of opinion the judgment appealed from must be and hereby is affirmed."

The defendant in error contends by those observations the court only decided, following its former decision, (76 Minn. 469,) that under chapter 6, section 388, General Statutes of 1894, the commission had the power to order the erection and maintenance of depots where public necessity or convenience reasonably required it to be done, and that the only change made by the act of 1901 was to shift the burden of proof from the municipality to the railroad company, and therefore the court, in deciding that the railroad company had not overcome the *prima facie* case arising from the statute, did not decide a Federal question.

It is difficult to deal with the motion on account of the uncertainty of the contentions of plaintiff in error. In its answer in the District Court it

directly attacks the statute. In this court its contentions are not so sweeping and we are left in doubt by its opening and reply briefs whether the statute as construed by the Supreme Court is objected to or only its application under the facts of the case. However, as the statute was directly attacked in the answer the motion to dismiss is denied, and we will consider whether the grounds of objection to the statute are substantial and sufficient.

(1) The act of 1897 provided as follows:

"That all railroad corporations or companies operating any railroad in this State shall . . . provide at all villages and boroughs on their respective roads, depots with suitable waiting rooms for the protection and accommodation of all passengers patronizing such roads, and a freight room for the storage and protection of freight. . . . Such railroad corporations or companies shall at such depots or stations stop their trains regularly as at other stations, to receive and discharge passengers, and, for at least one-half hour before the arrival, and one-half hour after the arrival, of any passenger train, cause their respective depots or waiting rooms to be open for the reception of passengers; said depots to be kept well lighted and warmed for the space of time aforesaid."

In its first opinion, (76 Minn. 469,) the court held that the word "villages," in the act meant incorporated villages, and that Emmons was not incorporated. The court, however, proceeded further, and said:

"But there is no doubt of the power of the commissioners, under the general railroad and warehouse commission act, to require a railroad company to provide a suitable depot and passenger waiting room at any place, incorporated or unincorporated, where public necessity or convenience reasonably requires it to be done. But this power is neither absolute nor arbitrary. The facts must be such, having regard to the interests, not only of the particular locality, but also of the public at large and of the railroad company itself, as to justify the commissioners, in the exercise of a reasonable discretion and judgment, in ordering the railroad company to provide a depot and passenger station at the place in question. Counsel for the relators admit this, the only evidence being the report of the commissioners themselves, we must refer to it to ascertain whether facts therein stated reasonably justified their order requiring the railroad company to provide and maintain a depot and station at Emmons. The statute provides that, 'Upon the trial of said cause [before the court, as in this case, to enforce the order of the commissioners] the findings of fact of said commission as set forth in its report shall be *prima facie* evidence of the matters therein stated.' (G. S. 1894, § 399.)"

The court then reviewed the facts, and decided that the order of the commission establishing a station at Emmons was unreasonable. The act was amended in 1901, and the court in the case at bar has decided, as we have seen, the amendment has only to shifted the burden of proof. In other words, to quote from the opinion of the court, "incorporated villages within this State (Minnesota) located on railway lines are *prima facie* entitled to depots," and at a hearing before the commissioners and in the District

Court the railroad has the burden of showing that the establishment of a depot is unreasonable and unnecessary.

The statute, as thus construed, does not transcend the power of the State, In other words, and meeting exactly the contention of plaintiff in error, the statute does not deny plaintiff in error the right to reasonably manage or control its property or arbitrarily take its property without its consent or without compensation or due process of law. (*Wisconsin &c. R. R. Co.* v. *Jackson*, 179 U. S. 387.) To establish stations at proper places is the first duty of a railroad company. The State can certainly provide for the enforcement of that duty. An incorporated village might be said to be such a place without an express declaration of the statute. To make it *prima facie* so by statute and to impose the burden of meeting the presumption thence arising certainly does not amount to an invasion of the rights of property or an unreasonable control of property. This seems to be conceded in the reply brief of plaintiff in error. Counsel say:

"The power of the State to require the construction and maintenance of stations at proper points is not questioned. We concede it. The power to require an unnecessary and wholly useless expenditure of money, in the construction and maintenance of stations where they are not needed, is denied. That is the whole case."

And stating the decision of the court in 76 Minn. counsel quotes as follows:

"The commissioners have the power to order the erection and maintenance of depot buildings, unless it is made to appear that such an order is so unreasonable in its terms as to actually result in depriving the company proceeded against of its property without due process of law."

And counsel adds: "This is, of necessity, a Federal question."

Whether it is or not, and whether it is so dependent on the facts of the case as not to be open to our review, is the next ground to be considered.

(2) The charge is that the property of plaintiff in error is taken without due process of law, but whether so taken is made to depend upon a question of fact, the requirement of "an unnecessary and wholly usless expenditure of money." It is well established that on error to a State court this court cannot re-examine the evidence, and when the facts are found we are concluded by such finding. (*Egan* v. *Hart*, 165 U. S. 188.) But in the case at bar we are met by the circumstance that the Supreme Court equally divided on the question whether the facts distinguish this case from 76 Minn. The plaintiff in error, therefore, contends that there has been no judgment of the Supreme Court on the facts and they are open to review here. The contention is not tenable. There is no statement of facts by the Supreme Court and its decision, though by a divided court, constituted an affirmance of the finding of the District Court. The finding was as follows:

"That the respondent railroad company has no depot or station house whatever for the accommodation of the public upon its line of railroad at the village of Emmons, and that its line of road is the only railroad reaching such village.

"That there is a suitable location for a depot or station house upon respondent's right of way at the point referred to and described in the order of the board of railroad and warehouse commissioners herein, which order is hereto attached. That it is necessary for the accommodation of the citizens of Emmons and vicinity, and the public at large, and public necessity requires that the respondent railroad company build and maintain a suitable station house at the said village of Emmons for the accommodation of the public transacting business with the respondent at that point."

The finding, like the verdict of a jury, is conclusive in this court. (*Dower* v. *Richards*, 151 U. S. 658.) It follows that the order of the Warehouse Commission was not an unreasonable requirement, and the judgment is

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.